IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1922

No. 4[redacted]58

W. TRINIDAD, AS INSULAR COLLECTOR OF INTERNAL REVENUE OF THE PHILIPPINE ISLANDS, *Petitioner*,

vs.

SAGRADA ORDEN DE PREDICADORES DE LA PROVINCIA DEL SANTISIMO ROSARIO DE FILIPINAS, *Respondent*.

APPEARANCE

AND

BRIEF FOR THE RESPONDENT

IN OPPOSITION TO THE GRANTING OF THE WRIT OF CERTIORARI

Imprenta y Librería de J. Pajarón, 649 Ave. Rizal, Manila

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APPEARANCE OF THE RESPONDENT

The undersigned attorney enters his appearance in this action in behalf of the respondent and herewith also files his brief in opposition to the granting of the writ of certiorari prayed for by the petitioner.

Manila, P. I., August 21, 1922.

GABRIEL LA O,
Attorney for the Respondent,
Manila, P. I.

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BRIEF FOR THE RESPONDENT

To the Honorable

The Supreme Court of the United States.

This case has come before this Honorable Court for a hearing on the petition for a writ of certiorari filed by W. Trinidad, as the Insular Collector of Internal Revenue of the Philippine Islands and addressed to the Supreme Court of said Islands, in the case of "Sagrada Orden de Predicadores de la Provincia del Santisimo Rosario de Filipinas,"

plaintiff and appellee, versus "W. Trinidad, as Insular Collector of Internal Revenue of the Philippine Islands," defendant and appellant.

By the transcript of the record in this case filed by the petitioner this Honorable Court will find that the nature of the case at bar is one whereby this respondent was required and compelled by the petitioner in the latter's oficial capacity, to pay the sum of ₱1,541.31 as the income tax levied against the respondent corporation for the year 1913, which tax it did pay but under protest, and that to recover said sum, the proper action was instituted in the Court of First Instance of the City of Manila, Philippine Islands.

The trial Court rendered judgment granting the plaintiff, herein the respondent, the relief prayed for. Not satisfied with said decision, the defendant, herein the petitioner, appealed to the Supreme Court of the Philippine Islands and this Court, after hearing the same and the arguments of the parties through their respective written briefs, rendered its decision, whereby it affirmed the judgment thus appealed from. Said decision, written by Justice J. Johnson, was concurred in by the chief justice and four of the associate justices of said Court. No dissenting opinion was recorded.

Again the defendant was dissatisfied and now prays in these proceedings that the entire record of the case be certified to this Honorable Court, in order that it may be reviewed and, if the errors assigned are deemed substantial, that the decision of the Supreme Court of the Philippine Islands be reversed.

The grounds relied upon for the granting of the remedy sought are:

> (a) In holding that the respondent corporation was organized and was operated exclusively for religious, charitable, scientific, or educational purposes; and

(b) In *not* holding that the respondent corporation was engaged from March 31, 1913, to December 31, 1913, in such ordinary commercial transactions as took it out of the provisions of the above mentioned paragraph "G (a)" of the Act of October 3, 1913, *supra*.

These grounds are set forth in two separate paragraphs as constituting two separate errors but, practically, they are only one, since, if it is held that the respondent corporation was operated exclusively for religious, charitable, scientific or educational purposes then it is clear that was not operated for other purposes, such, for instance, as commercial enterprises.

In as much as, in the appellant counsel's brief, such strong stress is laid upon the proposition that, because the respondent owns real estate, stock of the Bank of the Philippine Islands and other companies and obtains income from the capital so invested, it is not entitled to exemption, it may not be amiss to suggest, at the outset, that statutes of exemption, like all others, are to be so construed as to give effect to the plain intent of the legislator.

> "The rule stated is of course subject to the limitation that statutes creating exemptions are not to be so strictly construed as to defeat the obvious intention of the legislature in creating them". (Am. & Eng. Enc. of Law, Vol. 12, pag. 305.)

> "The construction instead of being strict, is liberal; doubtful expressions, instead of being resolved in favor of the United States, are to be resolved in favor of a weak and defenseless people, who are wards of the nation and dependent wholly upon its protection and good faith. This rule of construction has been recognized without exception, for more than a hundred years and has been applied in tax cases. (26 R.C.L. 314.)"

This American rule has been adopted by the Supreme Court of the Philippine Islands in the case entitled "The Roman Catholic Apostolic Church in the Philippines vs. Hastings, etc." 5 Ph. R. 701, wherein it said:

> 1. STATUTORY CONSTRUCTION: EXEMPTION STATUTES.—Statutes exempting charitable and religious property from taxation should be construed fairly though strictly and in such manner as to give effect to the main intent of the lawmakers.

A discussion of the cases cited in the chapter headed Administrative Rulings, of the petitioner's brief, would be superfluous, for the simple reason that none of them is derived from any decision of this Honorable Court, they being mere opinions of the Solicitor of Internal Revenue of the United States; and, although we do not deny, but, on the contrary do consider that the opinion of the officer charged with the enforcement of a particular law has certain preponderance and even legal weight in the doubtful cases submited to his resolution, as has been held in the case of "U. S. vs. Hill," 120 U. S., 169, still the Supreme Court of the Philippines has also declared in the case of "U. S. vs. Toribio," 15 Ph. R., 85, that:

> "Where the language of a statute is fairly susceptible of two or more construction, that construction should be adopted which will most tend to give effect to the manifest intent of the lawmaker and promote the object for which the statute was enacted, and a construction should be rejected which would tend to render abortive other provisions of the statute and to defeat the object which the legislator sought to attain by its enactment."

and this is precisely what occurs in the present case where the petitioner is of opinion that the respondent corporation is not exempt from this tax from the fact that, among its temporalities, it possesses shares, real estate and personal

properties, and sells some merchandise; in other words, because it has temporalities that bring it profits, and this according to the petitioner, indicates that the corporation is not organized nor does it operate exclusively for religious, educational or beneficent purposes, for such reason for exemption, he argues, should be exclusively interpreted in the sense that it may not have nor obtain income, products nor benefits from its temporalities.

That theory, put into practice, would mean that religious, educational or charitable corporations could not be the owners of nor hold temporalities, unless these were improductive which is wholly contrary to equity and justice.

This manner of construing the law seems to us to be narrow in the highest degree, arbitrarily strict and decidedly contrary to the rules of legal hermeneutics, and, as a final result, to tend to render illusory and inefectual the purpose the legislator sought through the enactment of the law.

> "In the case of "Haydenfeldt vs. Daney Gold Mining Company" (93 U. S., 634-638) it was said: "If a literal interpretation of any part of it (a statute) would operate unjustly or lead to absurd results, or be contrary to the evident meaning of the act taken as a whole, it should be rejected."

And we say that such a narrow construction renders the legislator's true purpose illusory, inasmuch as it is rational that *without* temporalities, that is, without material means of subsistence the existence of such corporations cannot be conceived, for these, in order to subsist, must not consume their properties, but preserve them, make them productive; their very existence, to put it plainly and tersely, depends upon their obtaining profits from their temporalities.

Neither the intent nor the spirit of the law could have been to make the life of such corporation impossible or to convert them into *mortmain* or to leave them dependent upon mere acts of charity for the maintenance of their own charitable designs.

Without fear of incurring in error, we may say that the lack of jurisprudence supporting the petitioner's contention is due to the fact that organizations in United States similar to that of the respondent in this case have been granted and have been enjoying the benefits of the exemption established in their behalf in the income tax law, and, naturally, never has such an erroneous contention as that argued in this case been the subject of any action to be determined by the highest Court of the nation.

The respondent, however, has some legal decisions in his favor and against the petitioner's contention, and so we have the case of "Book Agents of Methodist Episcopal Church vs. Hinton," (19 L. R. A., 289), the plaintiff being an institution created for religious and charitable purposes, which employed its capital in the business of the edition and sale of books, the proceeds so derived having been employed by it, in turn, exclusively for religious and charitable purposes. In this case we have just cited the Federal Supreme Court set forth the following conclusions:

> We are of the opinion that the plaintiff is an institution created for both religious and charitable purposes, that the ultimate use of its property has been in accordance with these purposes, that the income and profit derived from the use of its property have been exclusively applied to religious and charitable purposes, and hence it is entitled to exemption, under the provisions of the Constitution and Act.

> Held, that credits and notes belonging to a religious society, the income from which is applied to educational, religious and charitable purposes, are exempt. (115, 20 S. E. 626.)

The petitioner cites the case of "Maryland Casualty Co. vs. United States," 251 U. S. 342-385, where the court said:

> "It is settled by many recent decisions of this court that a regulation by a department of government, addressed to and reasonably adapted to the enforcement of an Act of Congress, the administration of which is confided to such department, has the force and effect of law if it be not in conflict, with the express statutory provision."

That is exactly our contention, that the opinion of the Solicitor of Internal Revenue if applied to the case at bar would be *in plain conflict* with the express statutory provisions of the Law.

The plaintiff, the herein respondent, on bringing this action in defense of its rights placed itself under the protection of the same Act on which the petitioner also founds its right; it is, therefore solely a question of interpretation of the same law that is to determine which of the two contestants is right, for their claims are at variance, since the respondent maintains that it is exempt from the payment of that tax, while the petitioner argues the contrary.

The respondent, in support of its action, alleged in its complaint that in answer to the demand made upon it by the petitioner, on July 28, 1918, requiring it to submit a declaration of its receipts since the year 1913 and make payment of the income tax prescribed by the Acts of Congress of October 3, 1913 and September 8, 1916, stated that, pursuant to the tenor of the said Acts, it was exempt from the payment of the tax demanded, on account of its being a corpora-

tion organized and administrated exclusively for religious, educational and beneficent purposes, as was affirmed in the affidavit which for the purpose was attached to and made an integral part of its complaint. Said affidavit, textually copied, reads as follows:

> "I, Fr. Serapio Tamayo, priest, of legal age after being duly sworn, state: That I constitute the corporation sole entitled Corporacion de Padres Dominicos de la Provincia del Santisimo Rosario de Filipinas; also known under the name Corporacion de Padres Dominicos de Filipinas; that this corporation is duly constituted and existing according to the laws of these Islands and organized and operated exclusively for religious, educational and beneficial purposes; that all the income earned by this corporation is exclusively applied to the maintenance and support of the needs for which it was created, and no part of its net income is applied for the benefit of its members, or of any other person or entity, with the exception of the financial help which, from its funds, is under obligation to render the following entities constituted and organized for educational purposes, to wit: Universidad de Sto. Tomás and Colegio de San Juan de Letrán, in Manila; San Alberto Magno, in Dagupan, Pangasinan; San Jacinto in Tuguegarao, Cagayan; Santa Catalina in Manila; Santa Rita in Santa Rita, Pampanga; Santisimo Rosario in Lingayen, Pangasinan, and other institutions of similar nature in foreign countries, all of which are branches of this corporation but devoted to scientific, educational and beneficial purposes.
>
> In testimony whereof, I affix my signature in Manila this 8th day of July, 1918.
>
> (Sgd.) Fr. SERAPIO TAMAYO."

(Transcript of Record, pag. 9.)

Notwithstanding the reasons set forth in said affidavit, the petitioner, in his official capacity as collector of internal revenue, did wilfully, arbitrarily and unlawfully, without express authority of law and contrary to law, required of the plaintiff the payment of the sum of ₱1,541,31 as the amount of the internal revenue tax on the income obtained by the plaintiff corporation from March 1, to December 31, 1913, payment of which the plaintiff made under protest, as admitted by the petitioner in paragraph 1 of his answer to the complaint (Transcript of record page 5).

This case was submitted for decision to the trial court, under the following stipulations of facts.

> "That the plaintiff is a corporation sole, constituted under section 154 to 164 of Act No. 1459 of the Philippine Commission, and is organized and operated for religious beneficent, scientific and educational purposes in these Islands and in its missions in China, Cochinchina and Japan, an that neither its net income nor part of its revenue from whatever source derived are applied to the benefit of any particular stockholder or individual, or of any of its members, and that no part of the whole or of any of its temporal properties belong to any of its members, who have no rights to the same, even in case of dissolution of the corporation.
>
> "That the dividends and interest or profits and expenses which appear in the defendant's Exhibit 1 as the plaintiff's income constitute the income derived from the investments of the capital of the plaintiff corporation, which was invested, in the year 1913, nearly in the manner and form specified in Exhibit 2 of the defendant, and that the rents appearing in Exhibit 1 were derived from the properties which, together with their valuations, are shown in the defendant's Exhibit 3."

Such being the facts, let us see whether or not the respondent is entitled to the right of exemption from taxation, as it claims to be, and as has been recognized and conceded by both the trial court and the Supreme Court of the Philippine Islands in accordance with and by virtue of paragraph G (a) of the Act of Congress of 1913.

It is an admitted and undisputed fact (*vide* Stipulation of Facts) that the respondent was organized in accordance with the provisions of Act 1459 of the Philippine Commission.

This Act in the part thereof entitled "*Religious Corporations*" defines the powers and purposes of such corporations and, in sections 154, 157 and 159 provides:

> Sec. 154. For the administration of the temporalities of any religious denomination, society, or church, and the management of the estates and properties thereof, it shall be lawful for the bishop, chief priest, or presiding elder of any such religious denomination, society or church to become a corporation sole unless inconsistent with the rules, regulations, or discipline of his religious denomination, society, or church, or forbidden by competent authority thereof.
>
> Sec. 157. From and after the filing with the Chief of the Division of Archives, Patents, Copyrights, and Trade-Marks, of the Executive Bureau of the said articles of incorporation, verified by affidavit or affirmation as aforesaid and accompanied by the copy of the commission, certificate of election, or letters of appointment of the bishop, chief priest, or presiding elder, duly certified as prescribed in the section immediately preceding, such bishop, chief priest, or presiding elder, as the case may be, shall become a corporation sole, and all temporalities, estates, and properties of the religious denomination, society, or church therefor, administered or managed by him as

a corporation sole, for the use, purpose, behoof, and sole benefit of his religious denomination, society, or church, including hospitals, schools, colleges, orphan asylums, parsonages and cemeteries thereof.

Sec. 159. Any corporation sole may purchase and hold real estate and personal property for its church, charitable, benevolent, or educational purposes, and may receive bequests or gifts for such purposes.

It is also an undisputed and admitted fact (*vide* Stipulation of Facts) that the respondent is organized and constituted for religious, benevolent, scientific and educational purposes in these Islands and in its missions in China, Cochinchina and Japan, and that neither its net income nor any part thereof passes to the benefit of any private stockholder or individual, nor accrues in any manner, whatever be the origin of such revenue, to any of its members, and that neither the whole nor any aliquot part of its secular properties belongs to any of its members, who have no rights therein, nor may they have any even in case of the dissolution of the corporation.

The Act of Congress of Octobre 3, 1913, the provisions of which were extended to the Philippine Islands by paragraph M, of said Act, is the only revenue law involved in this case, and neither that of 1916 nor that of 1917 are applicable hereto since the amount paid was simply for the income tax of 1913.

Paragraph A, Subdivision 1 of section "ii" provides:

"That there shall be levied, assessed, collected and paid annually upon the entire net income arising or accruing from all sources in the preceding calendar year to every citizen of the United States, whether residing at home or abroad, and to every person residing in the United States, though not a citizen thereof, a tax of one per centum, per annum upon such income, except as hereinafter pro-

vided; and a like tax shall be assessed, levied, collected and paid annually upon the entire net income from all property owned and of every business, trade, or profession carried on in the United States by persons residing elsewhere."

Paragraph B, subdivision 2, prescribes in part as follows:

"Subject only to such exemptions and deductions as are hereinafter allowed, the net income of a taxable person shall include gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, or sales, or dealings in property whether real or personal, growing out of the ownership or use of, or interest in real or personal property, also from interest, rent, dividends, securities or the transaction of any lawful business carried on for gain or profit or gains or profits and income derived from any source whatever including the income from, but not the value of, property acquired by gift, bequest, devise, or descent: PROVIDED, ..."

Paragraph G (a) provides in part, as follows:

"The normal tax hereinbefore imposed upon individuals likewise shall be levied, assessed, and paid annually upon the entire net income arising or accruing from all sources during the preceding calendar year to every corporation, jointstock company or association, and every insurance company, organized in the United States, no matter how created or organized, not including partnerships; but if organized, authorized, or existing under the laws of any foreign country, than upon the amount of net income accruing from business transacted and capital invested within the United States during such year: PROVIDED, HOWEVER, That nothing in this section shall apply to labor, agricultural, or horticultural organizations, or to mutual savings banks not having a capital stock represented by shares, or to fraternal beneficiary societies, orders, or as-

> sociations operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system..... nor to any corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual....."

The petitioner contends that in order to be exempt the respondent corporation must meet three tests: (a) it must be organized and operated for one or more of the specified purposes; (b) it must be organized and operated exclusively for such purposes; and (c) no part of its income must inure to the benefit of private stockholders or individuals.

The petitioner admits that the respondent meets the two tests (a) and (c), but does not admit that it also meets the test (b) and in THE FIRST PLACE his objection against such admission is because Act No. 1459 authorizes a corporation to lease or rent any or all of its real estate, to invest and reinvest its income and capital in such commercial institutions or enterprise as its manager may see fit, finally, to purchase and hold real and personal property for the corporation.

The same Act of Congress just above cited, when it refers to this Corporations does not do so under the hypothesis that they possess nothing or that they derive nothing from their properties, for said Act says, in its paragraph G. "The normal tax hereinbefore imposed upon individuals likewise shall be levied, assessed. ..... to any corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual ....."

and that normal tax is no other than that provided in paragraph A, sub-section 11, and in paragraph B, sub-section 2, which contain the following clear and specific provision:

> "Subject only to such *exemptions* and deductions as are hereinafter allowed, the net income of a taxable person shall include gains, profits and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, business, trade, commerce, or sales, or dealings in property, whether real or personal growing out of the ownership or use of or interest in real or personal property, also from interest, rent, dividends, securities or the transaction of any lawful business carried on for gain or profit, or gains, or profits, and income derived from any source whatever."

Therefore that Act and that tax refer to, and this latter is levied upon, profits and earnings of all kinds, from all sources, and the Act, in making reference to those profits and earnings in respect to certain organizations, associations and corporations, among others, those organized and that operate exclusively for religious, benevolent, scientific and educational purposes, declares that these are exempt from this tax, provided that no part whatever of their net income inures to the benefit of any private stockholder or individual.

As will be seen by this Honorable Supreme Court, we have copied the exact terms of the Act to avoid erroneous interpretations and to prove that, abiding by the law exactly as it stands, the respondent is entitled to the exemption that lies in its favor.

And IN THE SECOND PLACE the petitioner says that "it was admitted that the respondent was engaged in many ordinary commercial activities."

That is a wrong conclusion of the petitioner unwarranted by the facts, because no where in the record does such admission appear, neither that the corporation, as such, was engaged in any commercial activities. True it is that in Exhibit 2 it does appear that, of its capital, about one ten per centum of the value of the real estate owned by the corporation was invested in shares of the Bank of the Philippine Islands, Manila Ice Plant, Metropole Hotel and other concerns of the kind, but that does not necessarily mean that the corporation was engaged in those business but merely signifies that that part of its capital was so invested. Neither does it mean that the object of the corporation was to invest its capital in shares of industrial enterprises, but simply shows that its surplus income was not idle, but invested in such businesses as it could be in other activities and in loans. We do not see how it can be sustained that, for instance, a person who has acquired a number of shares of a cigar factory could be classed and recognized as a cigar manufacturer from the simple fact of his having become a stockholder in this kind of an industrial enterprise. Let us suppose, for example, that, instead of investing $5,180 in the Manila Box Manufacturing Co., $2,650 in Johnson Picket Rope Co. and other amounts in other concerns up to $190,020.88 which, as appears from said Exhibit 2, is the sum total of the whole capital invested by the respondent in those commercial activities, and which, after all, is but an small amount compared with the total corporate capital, if, we repeat, instead of such investments, the respondent had kept that amount idle, the consecuences would have been that the companies benefitted by those amounts would have lost the direct help of the respondent's capital, and not only the respondent would have suffered loss but also the development of said companies would have been retarded and

impaired and the Government itself would have suffered detriment, for we must bear in mind that the industrial or commercial concerns in which that small part of the petitioner's capital was invested have paid to the Government of the Philippine Islands the regular tax levied directly upon the profits and dividends of those companies or corporations and this is very particularly in point as regard the principal one, namely, the Bank of the Philippine Islands, in which, in 1913 the respondent had invested the sum of $138,237.04, according to the petitioner's Exhibit 2.

Furthermore in the statement Exhibit 1, it appears that among other sundry profits the respondent corporation had ₱2,711.15 from sales of wine. At first sight, and without any explanations of this item, anyone might think that the respondent was engaged in selling wine, chocolate or other merchandise, but such was not the case. It is a fact of which, undoubtedly, the members of this Honorable Court have personal knowledge, that the priests of catholic corporations such as is the respondent, are wont to use special wine in saying the daily mass. This particular wine is imported into the Islands, directly, by the respondent and is distributed among its members and the profits derived therefrom, as shown in Exhibit 1, represent the amounts obtained over and above its cost, and which are set aside for the payment of the general expenses and losses, that are charged to the account of the branches or entities constituted and organized for educational purposes, under the respondent's direction and protection, as well as to the priests pertaining to it and in charge of the parsonages distributed in different towns of the Islands.

Although we do not deem it necessary to go further into an examination of the different items of Exhibit 1, since this case is under consideration by this Honorable Supreme

Court to determine the legality or illegality of the exaction of the tax collected as a whole, nevertheless we respectfully submit to your Honorable Body that if it were the respondent's object to engage in the selling of wine, chocolate, or other merchandise, it would necessarily appear that a part of its capital was invested in such enterprises, but the fact is, as shown in the petitioner's Exhibit 2 that not one single cent was devoted to any such business.

The petitioner says (page 11) that, because the entire amount of the respondent's income was derived from purely commercial sources, the result is that the respondent was not organized *exclusively* for religious, educational and charitable purposes, but *also* for commercial purposes.

In the first place, it does not appear from Exhibit 1 that all the income was derived from commercial sources, since income was had from *rents* ₱91,141.69, from *dividends* ₱93,918.04, from *interest* ₱54,239.19, and, finally, from *sundry profits* which according to the petitioner's opinion is subject to taxation ₱13,905.26.

The rent from *real estate* is in no wise income realized from any commercial source, unless it should appear that said rent is derived from transactions that consisted in leasing real estate to sublease it and obtain a profit resulting from the difference between the amount paid to the owner as rental and that received on the same account from the tenant. But that is not the case here. The petitioner was the owner of the premisses and as such was entitled to collect its rentals without necessity of entering the field of commercial activities.

> "So an exemption of 'all charitable institutions' will exempt that leased out for business purposes the income from which is used for the purposes of charity (New

Orleans v. Poydras Orphan Asylum, 33 La. Ann. 850; New Orleans Female Orphan Asylum v. Houseton, 37 La. Ann 68).

"And under a statute providing that the property of charitable institutions is hereby exempted from taxation, the property of an orphan asylum is exempt although it is leased to third persons in such a way as to produce an income which is devoted to the purposes of the charity (New Orleans v. Poydras Asylum, 9 La. Ann. 584)."

The income from *dividends* does come, it is true, from commercial activities, in the broad sense of the term, but it has no bearing in the present instance for the simple reason that the corporations that inure this income pay the income tax directly to the Government, in conformity with the provisions of the law.

Neither is the income from *interest* derived from any commercial source, when the person or entity obtaining said income is not one engaged in the loan business and has invested his or its surplus in that way so as not to have it idle.

"If the endowment of religious societies is exempt, mortagages, the income from which is to be used to pay the minister's salary are exempt. (State v. Silverhorn, 52 N. J. L. 73)."

The income from *sundry profits* is virtually of no interest in the case at bar. As we have already said, the earnings or profits obtained from the sale of wines and other articles are practically nominal, since it represents the charges made against the individual accounts of the parsonages occupied by members of the corporation in the capacity of priests or of the missionaries, and against those of the colleges and other religious and charitable organizations conducted under the respondent corporation's guidance and assistance. Among this particular sundry profits it is to be

noted that there is an item classed as "*Alms for mass, cash, (donations)*" in regard to which the petitioner has overlooked the provisions of law that exempt from taxation the income so obtained.

The respondent contended before the trial court and also the Supreme Court of the Philippine Islands and likewise contends hereby before this Honorable Court that, by making its capital and properties produce income as set forth in Exhibit 2, its character as a religious, charitable, scientific and educational institution is neither impaired nor destroyed, and this is undoubtedly true unless it should appear in the record that in the commercial enterprises in which it has a portion of its capital invested had ever taken an active and direct part. The mere circumstance of A being a stockholder does not mean that he is a merchant; the most that can be granted is that he is an owner.

The bare fact of Admiral Smith having loaned some of his savings under security of a mortgage on a real property does not mean that, besides being a naval officer, he is a money lender.

It would be a different proposition if A had bought a sufficient number of shares to control the business and in this way make himself the manager of the company. Or if Admiral Smith, having obtained his release from the Navy, had devoted all his savings and the money borrowed by him on credit to make loans to borrowers as a means of gaining an income. Then and under these circumstnces A could properly be called a businessman and Admiral Smith a money lender.

The petitioner, on page 12 of its Brief, says, that the renting and leasing of houses and large estates, the buying and selling of corporation stock, and the buying and selling of wines, etc., are all commercial transactions, pure and simple.

We have something to say about this. As to the first part of the preceding averment, it must be made clear that the respondent is not, and never has been engaged in the renting and leasing of houses, convents or any kind of real estate. It has leased its own real estate, not the convents, but the houses not occupied by the members of the corporation. The farm lands or agricultural estate not being their development within the purposes of the corporation, precisely because it was not organized for agricultural pursuits were given out to tenants. There is some diference between one who leases his real estate and another who is engaged in the renting and leasing of real estate.

As to the second part of the petitioner's said averment, we have to say that the respondent is not and never has been engaged in buying and selling of corporation stock. It does appear that some losses were suffered in the selling of the stock of the Metropole Hotel, Manila Box Manufacturing Co. and Philippine Drug Co., but these losses were suffered because those companies were liquidated and dissolved and what appears as lost in selling is the difference between the money paid for the shares when bought and the money recovered as their share in the liquidation. The fact that there is nothing in the income as profit made in the selling of stocks, except $125.40 from the sale of 12 shares of the GERMINAL, shows evidently that the respondent was not engaged in the buying and selling of corporation stocks.

In respect to the third part of the above-stated averment we have said enough on page 18 of this Brief to dilucidate this point. Chocolate as well as the wine, religious articles, etc., are merely complementary means by which the corporation helps the priests of its community in charge of parsonages, and members of the different schools in the Islands conducted under its supervision.

The respondent in this case is a Corporation whose original members arrived in these Islands in the 16th century. It founded the still existant Santo Tomas University in Manila, Philippine Islands, in the year 1611; founded the College known by the name of "San Juan de Letran" in 1640 which stands on the site formerly occupied by an Orphan Asylum and is one of the oldest institutions of learning in the Islands. During its long existence it has also founded and is still supporting several other colleges and many other religious, charitable and educational organizations aside from various missions for the disemination of Christianity, located in China and adjacent countries. During the many years that have elapsed since it came to exist the respondent has accumulated real and personal properties. The chief and sole purposes of its constitution being to propagate the catholic religion among the inhabitants of these Islands, establish means for the education, assistance and support of orphan children, and other kindred purposes, the corporation received certain real estate, rural and urban, through royal concessions, gifts, bequests, devises, etc., and decided to lease such land, and that is the origin of the income now referred to in the petitioner's Exhibits 1 and 2. The proceeds from the sale of some properties and the accrued rental not be kept idle was invested in shares of different commercial enterprises, but in very modest proportions, and so it is that Exhibit 2 shows that only ₱103,567.68

equal to $51,783.84 is the total amount invested in seven companies and P276,474.08 ($138,237.04) in shares of the Bank of the Philippine Islands.

Some of the afore-mentioned facts are of public knowledge and the others appear in the record of this case. Such being the circumstances surrounding the existence of the respondent, is there any ground to aver that the respondent is not organized exclusively for religious, benevolent, scientific and educational purposes, but for commercial purposes? The conclusion or result is that the respondent is a corporation entitled to the benefits of exemption established by the Act of Congress and the inversion given to its surplus from rents, donations, etc., is an incidental feature which can not be considered as the object for which the respondent was organized, as the petitioner contends.

The petitioner also argues that the tax is levied only upon the *net*, and *not* upon the gross income, and that therefore, our contention that if it be not permitted to invest its capital and profits in enterprises producing income, it would soon have to cease its activities for lack of funds, is not an answer to the petitioner's contention.

Exactly because the income tax is levied upon the net income, as provided in paragraphs A and B of the Act of Congress of October 3, 1913, and because paragraph G (a) declares the corporations of the character of the respondent exempt from the payment of that tax, we maintain that the exaction made by the petitioner is illegal.

In the case of the United States vs. Kirby (7 Wall., 428) it was said by this Supreme Court that:

> ".....all laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an ab-

> surd consequence. It will always, therefore, be presumed, that the legislature intended EXCEPTIONS to its language which would avoid results of this character. The reason of the law should prevail in such case over the letter."

In the case of Hartranft vs. Weigmann (121 U. S., 609, 616), the Court said:

> "But, if the question were one of doubt, the doubt would be resolved in favor of the importer, as duties are never imposed upon the citizen upon vague or doubtful interpretations."

In the instant case, the language of the law is clear and definite, and the construction which the petitioner claims should be given to the ward "exclusively," quoted from the Act, would not only destroy the intent of the legislator, but also would involve a great juridical as well as grammatical error, because it confuses the term "ends" (purposes) with the term "means," considering them analogous in sense, while, as a matter of fact, they are completely different, convey entirely different ideas.

"Ends" are the object aimed at in an effort, while "means" is that through which, or by the help of which, an *end* is attained.

If the petitioner himself admitted, as he did, in the stipulation of facts submitted to the trial court, that all the profits accrued to the respondent were applied to its religious, benevolent and educational ends, then what doubt, or even color of doubt, could there be that such profits or earnings are ought else than a MEANS for the realization of its, the respondent's, corporative ENDS or purposes for which it was organized and for which it is operated and administered according to the provisions of the Law.

If the record should disclose, what does not, full and convincing proof that the legal transactions made for purposes of gain by the corporation, and that the collection of its earnings and other income was not necessary for the purposes of the corporation, that is, through the means of its maintenance to carry out its corporate ends, then and only then, we perhaps might be constrained to admit that such transactions, aimed at the acquirement of gain, might constitute a final purpose of the corporation, and not a lawful, reasonable, just, and adequate means for the sustainment of its corporate purposes, but with the knowledge (*vide* Stipulation of Facts) that such profits and earnings were and are applied toward the furtherance of religious, benevolent and educational purposes, how can those *means* for the realization of such well-defined designs be deemed to be corporative *ends?*

The respondent corporation was organized for the purpose or end of fostering, encouraging and maintaining religion, charity, science and eduction, and, for the reason that its principal activities tend to enable the attainment of such praiseworthy goals, the State, through mediation of law, relieves it of this burden, that is, does it the grace to remit this tax.

The legislator, in writing this exemption into the law, took into account only the purpose of the existence of the corporation, not else but the object or reason of its being, thus following the precedents which, as a general rule, have obtained in nearly all the states of the North American Union.

> "EXEMPTION OF CHARITABLE, BENEVOLENT, RELIGIOUS AND EDUCATIONAL INSTITUTIONS.—It is provided by statute in almost all of the states that the property of a charitable, benevolent, religious or educa-

> tional institution, used for the purpose for which the institution was established, shall be exempt from taxation. The constitutionality of such statutes is almost universally upheld even in states in which uniformity of taxation is required, on the ground that such institutions perform a work which would otherwise have to be carried on by the public at the expense of the taxpayers, and that the exemption of such institutions from taxation lessens rather that increases the burden upon other taxpayers." (26 R. C. L. 316.)

In drafting the said clause of exemption in behoof of charitable, benevolent, religious and educational institutions the lawmaker was not concerned at all about the means, the *modus operandi* that might be employed by the corporation for the attainment of its ends or purposes; *that* was a matter of indifference to him; what was essential was that its revenue should not contribute toward the enrichment of third parties, and that the corporation should apply ALL ITS NET INCOME to its corporative purposes, namely, to charity, benevolence, religion and education.

Should the construction given by the petitioner to the Act of Congress of October 3, 1913, prevail, all corporations of the nature of the respondent would, sooner or later, be paralyzed in respect to the exercise of their benevolent activities toward mankind, for their present temporalities, turned unproductive, would be insufficient to maintain the charitable work of the corporation for an unlimited period of time, the commendable purposes sought to be realized would be unattainable and the corporation would be irremissibly condemned to suffer complete exhaustion which would, sooner or later, compel it to lose its corporate existence to the detriment of those who now receive benefits from it.

For the maintenance and development of those benevolent activities of the corporation, and in order that this latter may and might fulfill its purposes and carry them fully into execution,—which is the object or reason for which it was organized,—it necessarily has and had to obtain from its temporalities, in the manner permitted by law, the income that it needs for the attainment of purposes of such magnitude as are those that it proposed to obtain upon its organization, and to contend that by doing so, that is, by putting its real and personal properties upon a revenue producing basis, it ceases *ipso facto* to possess the conditions necessary to entitle it to exemption from the income tax, would be tantamount to an annulment of the ex tion which the law expressly establishes for that kind of corporations, inasmuch as it is impossible to conceive how corporations of this nature could exist if they are bereft of the economical means or sources from which they lawfully derive the necessary receipts to meet their multiple and very considerable expenses of maintenance so as to be able to fulfill their corporative purposes. In other words, the theory of the appellant is that, since, to have income, profits or earnings, corporations of the nature of that here concerned conduct transactions which, though lawful, are for purposes of gain, they are not entitled to exemption, while on the contrary, if their capital remains unproductive, they may rightfully claim exemption. Under the premises we would ask: From what is a religious corporation, that has no income, declared to be exempt? What benefits accrue to a charitable, benevolent, religious, educational or scientific corporation by the laws declaring it to be exempt from the payment of the income tax, if, from the moment it obtains any profit or earnings (income) from its properties, it loses its right to said exemption?

"The rule of strict construction will not be pushed to the extent of unreasonableness. It is the duty of the Court to ascertain and carry out the intent of the legislature." (26 R. C. L. 314.)

CONCLUSION

In concluding, we respecfully submit:

That if the respondent, by having effected its organization, in accordance with the legal provisions regulating the creation of religious corporations, has complied with all the requisites of the law: has done nothing that it is prohibited to do and if no part whatsoever of all the income, be its origin what it may, that it has obtained and does obtain, has possessed and does possess, inures or has enured to any private stockholder or individual for his benefit, and if none of its temporalities, totally or partially, belongs to any of its members, they having no rights whatever therein, even in case of the dissolution of the institution, then such organization IS A CORPORATION THAT, IN ACCORDANCE WITH PARAGRAPH G OF THE ACT OF CONGRESS OF OCTOBER 3, 1913, IS EXEMPT FROM THE INCOME TAX.

In view of the foregoing considerations we respectfully ask this Honorable Supreme Court that the writ of certiorari prayed for by the petitioner be denied.

Respectfully submitted,

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Manila, Philippine Islands,
August, 1922